PHILADELPHIA'S RELATION TO RAPID TRANSIT COMPANY

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The era of readjustment in the relations between municipalities and public service corporations has brought no good to Philadelphia. A general wave of dissatisfaction with old conditions in the operation of street railways swept over the city but instead of providing a better system of control, it carried with it all the safeguards and protections of old franchises and laws. It left in its wake a city bereft of all control over its transportation system and bound for at least fifty years under a contract that has no counterpart in municipal history.

This contract was signed by the mayor of Philadelphia and by the transit company in pursuance of an ordinance of the city councils passed June 20, 1907, and took effect on July 1, 1907. As it defines and fixes the relation of the transit company to the city, an analysis of its terms will best describe their relative positions. In considering the contract it will be instructive to briefly review the circumstances under which it was proposed and then made into law.

The Street Railway System

All of Philadelphia's street railway system, with the exception of three small suburban lines, is controlled by the Philadelphia Rapid Transit Company, a holding company chartered May 1, 1902. It owns no tracks, but operates all lines through a 999-year lease of the Union Traction Company. This company chartered September 6, 1895, likewise owns no lines, but is the lessee of all the principal franchises. These it acquired between 1895 and 1901 by obtaining 999-year leases of the old holding companies, the Philadelphia Traction, Electric Traction, People's Traction, and several independent lines, the Hestonville, Mantua and Fairmount, the Lehigh Avenue, the Lindley Avenue, Fisher's Lane, the

Frankford and Fairmount, and the Germantown and Fairmount Park.

There are, therefore, really five holding companies, each of which has outstanding many millions of stock and some bonds, the dividends and interest thereon being guaranteed and paid by the dominant corporation, the transit company. The outstanding stock and bond issues of these holding companies are as follows:

	Stock.	Bonds.
Philadelphia Rapid Transit Company	$30,000,000	
Union Traction Company	30,000,000	$1,500,000
People's Traction Company	21,007,000	
Electric Traction Company	14,535,940	
Philadelphia Traction Company	20,000,000	665,000
	$115,542,940	$2,165,000

There are some thirty-eight surviving minor companies, which have perpetual charters and own perpetual franchises over the streets. These subsidiary companies (excluding the one elevated and subway company) have outstanding stock amounting to about $9,510,-142 and bonds of over $7,158,100. Of this total stock issue of all companies of $124,053,082 and total bond issue of $9,323,100, representing 563.47 miles of single track railway, all is interest- or dividend-bearing except the transit company's stock issue of $30,-000,000, which is not yet fully paid. The aggregate yearly rental required to be paid by the parent company to meet these charges is $7,143,431.66, and as compared with gross earnings for the year ending June 30, 1906, amounting to $17,676,248.58, equaling 48.88 per cent of receipts.

The annual report of the transit company for that year (ending June 30, 1906) showed:

Total receipts from all passengers		$17,483,144.79
Other sources, including interest on deposits		193,103.79
		$17,676,248.58
Operating expenses, $52^{87}/_{100}$ per cent	$9,153,603.70	
Taxes paid state and city, all companies	1,075,216.57	
		10,228,820.27
		$7,447,428.31

Guaranteed dividends and rentals to leased companies, including $1,200,000 to Union Traction Company	$7,143,431.66
Balance of net earnings	$303,996.65

Thus only $303,996.65, or 1.7 per cent, was shown by the books to be available for improvements, extensions, surplus and for dividends on $30,000,000 of stock.

This was the condition of the Philadelphia system in 1906, when the city became aroused over the very poor transit facilities furnished by the company. The service was slow, the equipment inadequate and out of repair, and the management apparently indifferent to criticism. In the midst of the popular agitation, the transit company, through its directors and friends, issued public statements excusing its shortcomings and alleging as the ground therefor the difficulty it experienced in raising money, due to the existence of certain laws, ordinances and contracts affecting the street railway companies, which impediments had accumulated between 1857 and 1901. These were the laws and obligations which prior to July 1, 1907, defined and prescribed Philadelphia's relations with its street railway system. The most important and valuable were the ordinances of July 7, 1857, April 1, 1859, and March 30, 1893. They secured to the city the right to compel the companies to pave and keep paved, from curb to curb, all streets traversed by their lines; to remove all snow from such streets; to remove overhead wires and poles upon demand and finally, insured to the city the right to purchase some of the most profitable lines "at any time" by paying a "fair valuation." Numerous other restrictions for the protection of the city were imposed by the same and similar ordinances.

The transit company demanded the repeal of all such laws which, as it claimed, depressed its securities and interfered with the raising of funds for needed improvements. Its complaints and cries for relief were advanced with the utmost shrewdness.

All of the newspapers and many of the people of the city were led to promise their support to a method of adjustment which the company was about to put forward. This plan was soon published, and embodied a contract to be executed between the city and the transit company by which all their relations should be defined and limited, and all the laws and ordinances above referred to be

repealed. It was essentially a company proposition, and although apparent from every section that it would operate to the advantage of the company and to the disadvantage of the city, yet the popular mind was so dulled and so trusting that within a very brief space of time the street railway problem was "solved"—to the thorough satisfaction of the transit company at least.

The legislature of Pennsylvania was in session in the winter of 1906-07, and the friends of the company went to Harrisburg with a bill authorizing municipalities and street railway corporations to enter into contracts to regulate and fix the powers, duties and liabilities of such companies. After considerable lobbying this bill was passed, and Governor Pennypacker signed it, despite the protest of a large committee of citizens. The ordinance passed councils in June, 1907, and the contract became effective July 1, 1907.

Terms of the Contract

Philadelphia's contract should not be accepted as a guide or pattern for other cities. It is to be studied, not followed. In the opinion of all critics, it is the consequence of political conditions peculiar to Philadelphia and hardly possible elsewhere.

The agreement, of some ten pages, with fifteen paragraphs, is now the code of laws governing street railways in Philadelphia. By its terms virtually every existing law or ordinance affecting the construction, operation or taxation of such railways was repealed *eo instanter*. The preamble is an index of its contents. It reads in part:

WHEREAS, Beginning about the year 1857 different companies to the number of upwards of fifty, incorporated by the Commonwealth of Pennsylvania, have been granted consent by the city to occupy various streets of the city for the purpose of transporting passengers from point to point along the same, which franchises and consents have been granted subject to various conditions and restrictions; . . . .

AND WHEREAS, The terms, conditions, restrictions and liabilities which have been imposed upon these various companies . . . . differ widely, and there is dispute and uncertainty with respect to the effect of many of the provisions thereof, and it is believed that it is to the interest of the public as well as of the parties hereto to supersede the former regulations, and to define and regulate the relations between the parties hereto so as to make them fixed, fair and uniform;

AND WHEREAS, The city should have a voice in the management of the company and a supervision of its accounts and expenditures;

AND WHEREAS, A large sum of money is required to improve, complete and extend the present system of the company in order that it shall better serve the public; and for this purpose it is essential that the position of the company be clearly defined, and the securities of itself and its underlying properties unquestioned, and its right to make extensions in the future assured, in order that it may obtain credit to finance the increased transit facilities so necessary for the welfare of the public and the development of the city; . . . , etc.

In the first and second paragraphs it is stipulated that the transit company shall not increase its capital stock or funded debt, assume further leases or obligations, or part with any of its leaseholds, stocks or franchises without the city's consent; and that when extensions are to be made or new companies are to be organized, the company shall apply for and receive the consent of the city before such action shall be of effect.

The third paragraph concerns new lines, and has given rise to much criticism. It declares that when there is a public demand or petition for any lines of surface, elevated or subway road, councils shall first by ordinance determine the route of such line and the terms and conditions under which it shall be built, financed and operated, and the transit company shall then have a ninety days' option on such franchise; and if and only when the transit company rejects such franchise, or accepting it, fails to begin work of construction in good faith, can the road be offered to other persons or corporations. It must then be offered on terms and conditions exactly similar to those which were tendered to the transit company. This effectually shuts out all competition for at least fifty years, in the entire city. If a franchise were acquired by a competing company it would be liable to forfeiture should there be the slightest variation in the terms and conditions of erection, financing or operation from those first rejected by the transit company.

The fourth paragraph confers upon the city the right to be represented on the board of directors of the company by the mayor (*ex officio*) and two other persons elected by councils for terms of four years, and gives to these representatives all the powers of directors and a vote upon all questions, but without incurring liability as directors. When one reads the corporation laws of the state, it readily suggests itself that this provision is difficult of enforcement, if not absolutely without legal effect. Subsequent to

the execution of the agreement, councils chose two citizens as directors, and they, with the mayor, have attended the board meetings. No advantage to the city has as yet resulted from such representation.

The fifth paragraph requires the company to file with the city controller a "full statement of receipts and expenditures for the preceding fiscal year," and directs the controller to thereupon examine the books, accounts and vouchers of the company, "for the purpose of ascertaining the correctness of said reports," and to report the result to councils. The controller already has under his care all the books and accounts of the city, and such an examination by clerks of his office will not prove a very efficient safeguard of the city's interests in the accounting of the company. In the Chicago ordinances, a much more complete verification is required —the report must be made under oath and on forms prescribed by the city controller. This is followed by an annual audit of the company's books by expert accountants, in the selection of whom the city has a voice.

The sixth paragraph relates to dividends and the city's share of profits. It provides that the company shall not declare or pay any dividends beyond six per cent per annum, cumulative from January 1, 1907, without at the same time appropriating from earnings and surplus and paying into the city treasury a sum equal to that portion of the total dividend which is in excess of six per cent. Transit company stock has not yet paid a one per cent dividend, so that a six per cent return seems far distant, and the cumulative feature is a bar to the city for many years to come. Should twenty per cent be earned and all the accumulated arrearages be met, the city would be entitled to nothing so long as the directors chose not to *declare* a dividend beyond six per cent.

The seventh paragraph is of no general interest. It extends for three additional years a franchise to build a Frankford elevated road. It may be mentioned that no obligation is anywhere put upon the transit company to build any new lines, surface, elevated or subway, it being free to surrender even the Frankford elevated franchise after three years of inaction.

The eighth paragraph is of such importance that I give it in full:

> The city hereby confirms to the company and its subsidiary companies all of the consents, rights and franchises heretofore granted to and exercised by them, and each of them, including the right of operation by the overhead

trolley system, free of all terms, conditions and regulations not herein provided for, and does further give up and surrender and agree not to exercise any rights which it may possess in respect to a repeal or resumption of any of the said rights now possessed or heretofore granted, or a taking over of any of said properties, any law, ordinance or contract now in force, or hereafter passed to the contrary notwithstanding. *Provided,* however, that the present rates of fare may be changed from time to time, but only with the consent of both parties hereto: And *provided further,* that nothing in this contract contained shall be construed to limit the power of the city to make all rules and regulations, relating to the operation and management of the lines controlled by the company, necessary and proper to be made under the police power.

It will be seen that here the city bargained away every reserved power of control or regulation which it possessed, except such as can be brought within the scope of the police power—*i. e.,* the protection of the health and safety of the citizens. No feature of the agreement more aptly illustrates the difference between it and the Chicago ordinances. Section 35 of the Chicago City Railway Company ordinance provides, *inter alia:*

> And the said city hereby expressly reserves the right to make all regulations which may be necessary to secure in the most ample manner the safety, welfare and accommodation of the public, including among other things the right to pass and enforce ordinances to protect the public from danger or inconvenience in the management and operation of street railways throughout the said city and the right to make and enforce all such regulations as shall be reasonably necessary to secure adequate and sufficient street railway accommodations for the people, and insure their comfort and convenience.

In large cities overhead wires and poles are rightly deemed relics of a rude and inartistic age. Philadelphia had an expressly reserved power to compel the removal of these unsightly and somewhat dangerous obstructions, and to compel the adoption of underground trolleys over the whole rapid transit system, but this power, too, was surrendered.

The prevailing rate of fare in Philadelphia is five cents minimum and three cents additional for a transfer. This high toll is perpetuated, unless the company shall voluntarily reduce its charges.

In the ninth paragraph the company covenants to create what is termed a "sinking fund," to be held by three designated city officials, for the benefit of the city. No payment to this fund is to be made until July, 1912, when payments of $10,000 monthly for ten years are to be made; then $15,000 monthly for ten years;

$20,000 monthly for ten additional years; $25,000 monthly for a fourth period of ten years, and finally $30,000 monthly for the last ten years. These payments are to be treated by the company as fixed charges "reducing the income applicable to dividends," and are to be paid ahead of dividends until any arrears are met. The fund shall be invested in securities legal for trustees and in stock of the transit company, at par, on bonds or underlying securities of the company on a four per cent basis. Stock of the company once acquired shall not be resold. The city is given the right by ordinance to withdraw the money from the sinking fund at any time after it equals $5,000,000 and to use it for any purpose, at the same time requiring future payments to be made direct into the city treasury. This paragraph should be considered in connection with paragraph eleven, which gives the city the right to buy the property, leaseholds and franchises of the company on July 1, 1957, or upon the first day of July in any year thereafter, by giving six months' notice and upon paying to the company an amount equal to par for its capital stock then outstanding, the city to take the property, leaseholds and franchises subject to all bonds, rentals and other indebtedness then existing. In making up the purchase price it is stated that the city shall be entitled to use the money in the sinking fund, if any remains therein. Upon purchase by the city it is to be free to operate the lines or lease the right to operate upon such terms as it may desire, the rights of the city to be assignable and may be put up at public sale to the highest bidder. The company reserves its franchise as a corporation with power to operate passenger railway lines and may become a bidder for the city's rights.

The value of this right of purchase and sinking fund is much less than it may appear. The sinking fund, if allowed to accumulate for forty-five years, or till 1957, will not supply the $30,000,000 required to pay for the stock now outstanding; and the city, having the right to withdraw the money by simple ordinance after it amounts to $5,000,000, it is not to be thought possible, in these days of huge political contracts, requiring large sums to be raised by municipalities, that the sinking fund will remain intact. And if the sinking fund be withdrawn, the city will be without the means to exercise its right of purchase.

As we have seen, the Rapid Transit Company, prior to the execution of this contract, was responsible for the paving and repaving of several hundred miles of city streets, paid $50 per year

license upon each of its 2,421 cars, or $121,050 per year, and was compelled to remove snow from streets occupied by street railways. In the tenth paragraph of the contract these expenditures and all other possible taxes and license, except the small item of real estate taxes and dividend tax under state charters, are capitalized, and the company agrees to pay, for fifty years, an annual sum of from $500,000 for the first ten years to $700,000 for the final period of ten years, in lieu of all obligations for street paving, snow removal, car licenses, and any other kind of tax or charge except real estate and dividend taxes. The city agrees to accept the annual payment as also in lieu of the right to hereafter impose upon the company or its subsidiary companies similar charges or obligations, including license fees upon the system or operating cars. In the original draft of the contract the city surrendered all right of imposing further taxes or obligations, but the legality of this being questioned, a clause was inserted to the effect that in case any taxes or assessments be hereafter imposed by the city upon the company the annual sum herein provided for and the city's share of any dividends shall be credited to such taxes and assessments, further taxation being thus made practically impossible, though not legally so.

For streets on which new lines or extensions may hereafter be built the company agrees that there shall be added to such yearly sum seven cents per square yard of macadam pavement, eight cents per square yard of asphalt, and six cents per square yard of other kinds of pavement, this being intended to reimburse the city for relieving the company of the original paving of such streets and the maintenance of same. The company continues to be responsible for repairs to streets torn up by its workmen or damaged by them.

It was called to the attention of the councils, while the ordinance was pending that, while the contract is not limited in duration, and may continue in effect 100 to 500 years, the annual payments in lieu of taxes and street paving repairs cease in 1957. This criticism, however, was disregarded.

The twelfth paragraph declares that the city shall not be deemed a partner with the company, nor be responsible for its obligations; that it shall not become a joint owner or stockholder in the company, nor shall its credit be pledged or loaned to the

company. The constitution of the state preventing all such contingencies, the section is surplusage.

The remaining paragraphs of the contract are formal. The ordinance authorizing the contract provided for the repeal of all ordinances and for the cancellation and annulment of all contracts inconsistent with its terms, and that repeal became operative upon the signing of the agreement.

Effect of the New Contract Upon the City

An immediate and surprising effect of the execution of the contract of July 1, 1907, was to allay public feeling against the transit company and to silence all demands for better service and improvements in the railway system. The interest of the people in the transit question apparently died when the agreement was born, and no effort has since been made by the city government or by civic organizations to force the company to redeem its promises to improve the traction facilities. This is the more surprising when it is recalled that support for the company's plan was obtained on the representation that its adoption would mean the prompt rehabilitation of the operating department, including the furnishing of an abundance of new cars. That the attitude of the newspapers and citizens generally toward the change in relations was altogether too confiding and their knowledge of the contract superficial is illustrated by this quotation from an editorial which appeared in one of the leading morning newspapers while the ordinance was before councils:

> This paper has not opposed editorially the rapid transit plan because it is the only definite plan that has been offered which affords any hope that the thousands of hard-working people who are forced indecently and barbarously to hang by car straps in a seething mass of wriggling humanity, will be carried in more comfort than at present. The opposition to the plan is wholly negative, and proposes no relief of the kind that promises to move actual people to and from their homes.

It is authoritatively stated that the transit company has curtailed the facilities rather than improved them since July 1, 1907. The number of cars in operaton has been reduced by from 100 to 200, and the overcrowding has not been remedied.

All observing persons believe that only a strong alliance between the political leaders of the city and the transit company made possible the forcing through councils of the repealing ordi-

nance and contract. The police department has been swung over to the aid of the company in preventing suits for personal injuries, and it is charged that the first report of all accidents on the street railways is telephoned by the police department to the company's detectives.

For many years Philadelphia has been reputed the best paved large city of the country. This has been due to the fact that the maintenance of over 7,000,000 square yards, or about 450 miles, of paved streets was required of the street railway companies, and the paving repairs were promptly made. Now that the transit company has been relieved of this duty, the streets are in worse condition than has been known for many years. The total income of the city from the company under the agreement of 1907 is $500,000 per year until 1912, when $120,000 additional will be allotted to the sinking fund. Meanwhile it has been necessary for councils to set aside the entire $500,000 for paving the streets occupied by railways and to appropriate a further sum of about $25,000 for salaries of inspectors to superintend the work formerly done by the railways. The $121,000 of car license fees heretofore received by the city appears to be a complete loss, and the city is charged with the expense of removing snow.

Philadelphia's contract cannot be defended. From a municipal point of view it was a stupendous blunder. As my analysis is made from that standpoint, it is necessarily critical. It should not be imagined that the agreement is a failure from the corporation standpoint; on the contrary, it has been a success, seemingly accomplishing all that the company looked for. In fact, within a few weeks after its execution, it became so apparent that the city had been the loser in the matter of yearly payments for taxes and street paving that the company voluntarily acceded to a request that a committee of its directors and citizens be appointed to revise the sum to be paid to the city. That committee, however, accepted the company's statements of its expenditures for paving repairs and snow removal as conclusive, and did not consider what would be the cost of such work to the city. The result was a report declaring the $500,000 a fair lumping of the company's previous disbursements. No mention was made of the loss to the city in the matter of original paving on new lines or extensions, nor of the fact that the company obtained a low average of annual paving expense

by neglecting all repairs to city streets in the year ending June 30, 1907.

The people of Philadelphia had no intelligent conception of the real purport and effect of the ordinance and contract. The legal questions raised in the transit situation were so involved and the sources of information so limited that few men realized at the time what the effect of the work of the company's lawyers and the politicians would be. The subject had not been considered by a commission of experts, nor been instructively threshed out in the debate of a heated political campaign, as in Chicago.

Chicago's plan of reorganization was conceived and executed by men who sought to benefit and protect the interests of the municipality, while in Philadelphia the readjustment was planned by the company's lawyers and executed by politicians who accepted the company's point of view without question. The difference in source of the two methods of dealing with the street railway problems undoubtedly accounts for the very apparent disparity in the results thus far obtained by the two great cities.

Nothing has occurred in Philadelphia since the passage of the ordinance to awaken interest in the true relations between the municipality and the company. The idea prevails that the city is a full partner with the company and will reap substantial benefits from the contract. The general ignorance will no doubt continue until transit conditions again become a source of acute irritation. That may be two years distant or it may be ten; but when the people learn the truth there will ensue a period of violent agitation.

As no laws can restrain public opinion and no institution can successfully resist the force of public necessity, this vicious agreement will some day be broken. But such a result will be accomplished only at great expense, and the blame therefor rests upon the citizens whose indifference invited the consequences.